

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Room 3000
Washington, DC 20529-2090



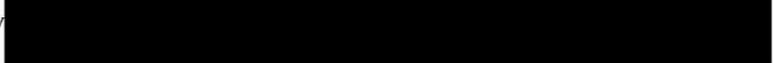
U.S. Citizenship
and Immigration
Services

PUBLIC COPY

09



FILE: WAC 06 262 53180 Office: CALIFORNIA SERVICE CENTER Date: **FEB 09 2009**

IN RE: Petitioner: 
Beneficiary: 

PETITION: Petition for Nonimmigrant Worker Pursuant to Section 101(a)(15)(P) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(P)

ON BEHALF OF PETITIONER:


INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).


John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The AAO will summarily dismiss the appeal.

The petitioner filed a Form I-129, Petition for a Nonimmigrant Worker, seeking P-1S classification of the beneficiary as essential support personnel pursuant to section 101(a)(15)(P)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(P). The petitioner is self-described as a provider of support personnel for the horse racing industry. It seeks to temporarily employ the beneficiary as a jockey valet for a period of approximately 20 months.

The director denied the petition on October 13, 2006, concluding that the beneficiary does not qualify as an essential support alien under the regulations because the petitioner did not establish that the duties of a jockey valet are an integral part of the performance of the P-1 athlete or that such services could not be readily performed by a U.S. worker.

Counsel for the petitioner filed the instant appeal on November 13, 2006. Where asked to briefly state the reason for appeal on the Form I-290B, Notice of Appeal, counsel stated: "Wrong interpretation of law." Counsel indicated that he would submit a brief and/or evidence to the AAO within 30 days. Counsel has since confirmed that he did not submit a brief or evidence as stated on the Form I-290B.¹

The regulation at 8 C.F.R. § 214.2(p)(3), provides, in pertinent part:

Essential support alien means a highly skilled, essential person determined by the Director to be an integral part of the performance of a P-1, P-2, or P-3 alien because he or she performs support services which cannot be readily performed by a United States worker and which are essential to the successful performance of services by the P-1, P-2, [or P-3] alien. Such alien must have appropriate qualifications to perform the services critical knowledge of the specific services to be performed, and experience in providing such support to the P-1, P-2, or P-3 alien.

Accordingly, the petitioner must establish that the support alien will provide support to a P alien and is essential to the success of the P alien. The petitioner must also establish that beneficiary is qualified to perform the services and the services cannot be readily performed by United States workers.

The director denied the petition, in part, based on the petitioner's failure to submit sufficient evidence to establish the beneficiary's prior essentiality, critical skills and experience with the principal P-1 athlete, as required by 8 C.F.R. § 214.2(p)(4)(iv)(B)(2). Specifically, the director found that the petitioner had poorly documented the beneficiary's prior relationship with the principal athlete in an essential support role, and had failed to show that the duties to be performed could not be readily performed by a United States worker. In denying the petition, the director provided a detailed discussion of the evidence submitted and explained why such evidence failed to meet the regulatory requirements for this visa classification.

¹ The AAO contacted counsel by facsimile on October 23, 2008 to advise him that no brief or evidence had been incorporated into the record as of that date, and to afford him an opportunity to resubmit any documentation that had previously been timely submitted. Counsel replied to the AAO on October 31, 2008, and stated that he did not submit a brief or evidence in support of this appeal.

Regulations at 8 C.F.R. § 103.3(a)(1)(v) state, in pertinent part:

An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal.

Upon review, the AAO concurs with the director's decision and affirms the denial of the petition. Counsel's general objection that the director's decision amounted to a "wrong interpretation of the law," without specifically identifying any errors on the part of the director, is simply insufficient to overcome the conclusions the director reached based on the evidence submitted by the petitioner. The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980).

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Inasmuch as the petitioner has failed to identify specifically an erroneous conclusion of law or a statement of fact in support of the appeal, the petitioner has not sustained that burden.

ORDER: The appeal is summarily dismissed.